SUPREME COURT U. S.
FILED
DEC 5 1979
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1979

No. 79-867

EDDIE THOMPSON, JR.,
Defendant-Petitioner,

v.

COMMONWEALTH OF KENTUCKY,
Plaintiff-Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF KENTUCKY

EDDIE THOMPSON, JR.,
Pro Se
736 Highland Avenue
Covington, Kentucky 41011
(606) 491-6278

I hereby certify that 3 copies of the foregoing Petition have been served upon Mr. John Elfers, Kenton County Attorney, 304 City-County Building, Covington, Kentucky 41011, by the United States mail this ..... day of November, 1979.

/s/ EDDIE THOMPSON, JR.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1979

No. .....

EDDIE THOMPSON, JR.,
Defendant-Petitioner,

v.

COMMONWEALTH OF KENTUCKY,
Plaintiff-Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF KENTUCKY

Petitioner, Eddie Thompson, Jr., respectfully prays that a Writ of Certiorari issue to review the Judgment (order) of the Supreme Court of Kentucky entered in the above Styled case on October 23, 1979. Appendix, page 2a.

OPINION BELOW

The Judgment of the Supreme Court of Kentucky was entered on October 23, 1979, Appendix, page 2a. The Court of Appeals of Kentucky entered its orders on May 25, 1979 and June 25, 1979, respectively, Appendix, pages 3a-5a. The Kenton Circuit Court (Appeals court) entered its orders on October 16, 1978, Appendix, page 19a; February 22, 1979, Appendix, page 20a; March 8, 1979, Appendix, page 21a; and March 15, 1979, Appendix, page 22a, respectively.

The Orders, Verdict and Judgment of the trial court (Kenton District Court) were entered on August 15, 1978, Appendix, pages 6a-7a; August 23, 1978, Appendix, page 8a; August 24, 1978, Appendix, page 9a; September 1, 1978, Appendix, page 11a; September 12, 1978, Appendix, page 12a; September 21, 1978, Appendix, pages 13a-14a; September 22, 1978, Appendix, page 17a; September 27, 1978, Appendix page 18a, respectively.

JURISDUCTION

Jurisdiction of this court is invoked pursuant to 28 USC 1257 (3), this being an appeal which draws into question the validity of any Kentucky Supreme Court Rule, law and/or procedure that permits a single Kentucky Supreme Court Judge to deny an appeal (Discretionary Review) when the trial court record has been tempered with, on the grounds that it is repugnant to the Kentucky Constitution (if enforced) and the 14th Amendment of the United States Constitution.

QUESTIONS PRESENTED

1. Can a trial court proceed in a case where there is no warrant, complaint and/or other criminal process.
2. Must a trial court certify and Index its original record when it goes to a Court of Appeals.
3. Where the trial court neglected to comply with Kentucky Civil and Criminal Rules and Procedure, and Criminal Rule 11.04, should the appeal court dismiss the appeal because the Judgment is void.
4. Can an appeals court dismiss a timely filed appeal and order the sentence of the trial court (District Court) shall be executed.

5. Can a single Justice of the Kentucky Supreme Court deny a timely filed Motion for Discretionary Review in violation of SCR 1.020 (1) (a) and Kentucky Civil Rule 76.28 (1).

STATEMENT

The instant case is akin to Supreme Court case # 79-719 filed on November 5, 1979. In an effort to gain possession of petitioner's home (subject matter of Supreme Court case # 79-719), Mr. Richard Nelson had engaged police officers to make a threat on petitioner Thompson's life on April 15, 1978. When the plan failed, police officers charged petitioner Thompson with Assault on a police officer, Disorderly conduct, Resisting arrest, and DUI. No complaint, warrant and/or other criminal process has been signed by any police officer, judge, or anyone else. Nor has petitioner been served with any such process.

Examination of the record reveals that the prosecutor made no effort to submit a brief or any other pleading in this matter to the trial court. In fact, he produced no evidence or submitted anything to the jury, except prejudicial remarks.

Examination of the pre-trial order, Appendix, pages 6a-7a, reveals that Judge Condit (a defendant in Supreme Court case #79-719) signed the order on August 15, 1978.

Ironically, petitioner Thompson was illegally jailed by Judge Stephens on August 15, 1978 to stand trial for criminal trespassing at his own home (subject matter in #79-719). The warrant was signed by Mr. John Elfers, Kenton County Attorney, on July 29, 1978.

When petitioner Thompson was jailed, Judge Condit knew he could not respond to the pre-trial order, and no

attorney, counsel or anyone else filed any written objections and/or affidavit or memorandum.

Subsequent to being illegally jailed twice (August 15-30, 1978, and September 29 to October 2, 1978), petitioner Thompson has learned that Judge Stephens had not signed any order committing petitioner Thompson to jail. Petitioner Thompson filed charges with the Mayor and Commissioners (K.R.S. 90.492) against the police officers in this case, and as of today, there has been no hearing.

Judge Condit allegedly conspired to have Thompson's wife arrested in Supreme Court case # 79-719 (Federal District Court # 77-72).

Examination of the record reveals that the trial court clerk wilfully neglected to certify its original record to the Appeal court (Kenton Circuit Court), a violation of Kentucky Rules of Criminal Procedure and Civil Rules 72.04, 75.07, etc.

The Kenton Circuit Court (Appeals court) also recognized that Criminal Rule 11.04 had not been followed.

Judge Stephens attempted to prevent petitioner Thompson from filing an appeal in the Kenton Circuit Court; he went so far as to tamper with the records of the District Court (trial court).

The Kenton Circuit Court dismissed the timely filed appeal (a Constitutional right) but ordered the execution of the sentence of the District Court, Appendix, page 20a, an abuse of discretion since petitioner was entitled to one appeal as a matter of law. Kentucky Constitution Section 115.

The Court of Appeals of Kentucky permitted petitioner Thompson to file a Motion for Discretionary Review out of time, Appendix, pages 4a-5a.

The Court of Appeals of Kentucky denied review without giving any reasoning, Appendix, page 3a.

Petitioner Thompson sought discretionary review in the Supreme Court of Kentucky. Counsel for respondent Commonwealth of Kentucky filed no response. The Supreme Court Chief Justice Palmore denied review without stating any reasoning.

REASONING FOR GRANTING WRIT

Petitioner Thompson has claimed inter alia that he was framed, that he received ineffective assistance of counsel (while being illegally held in jail), and that intrinsic fraud was practiced upon the court in the trial court (Kenton District Court).

The failure of the District Court Clerk to index the original record and transmit it as required by law to the Circuit Court was an effort to deny petitioner an effective appeal as required by Kentucky State Constitution Section 115 and in contravention of the 14th Amendment to the U.S. Constitution.

Rules of Criminal Procedure require that on appeal from the District Court, the record *shall* consist of the *entire* original proceedings in the District Court (CR 72.04), the record to be prepared and transcribed by the court (CR 75.04) and there shall be a general Index at the beginning of the record (CR 75.07 (10)).

Criminal Rule 11.04 provides that "A Judgment of conviction shall set forth the plea, the verdict of finding, the adjudication and sentence, a statement as to whether the defendant is entitled to bail and the amount of bail."

Since no complaint and/or warrant or other criminal process have been filed or served upon petitioner Thomp-

son, the trial Judge could not comply with R.Cr. 11.04; nor could the Court Clerk certify records it did not have.

"The rule applies to police courts as well as other courts." White v. Commonwealth, 481 S.W. 2d 656.

Judge Stephens tampered with the records in the District Court. The Clerk of the District Court says he cannot find parts of the original record.

On appeal to the Kenton Circuit Court, that court dismissed the appeal . . . we assumed it was because the Judgment was void. White v. Commonwealth, 481 S.W. 2d 657. (written by now Kentucky Supreme Court Chief Justice Palmore)

The Kenton Circuit Court judge refused to elaborate, but ordered . . . "the sentence of the District Court shall be executed," an abuse of discretion, Appendix, page 20a.

Judge Stephens had the Kenton District Court Clerk to issue a criminal summons for Petitioner Thompson to appear before him when he knew he had no jurisdiction to do so.

Petitioner believes that if there was a valid judgment in the trial court (Kenton District Court), the appeals court (Kenton Circuit Court) could only affirm and/or remand back to trial or vacate the Judgment in the trial court.

In any event, the appeals court (Kenton Circuit Court) refused to state any authority and/or reasoning for its action, Appendix, page 20a.

The Court of Appeals of Kentucky denied discretionary review, Appendix, page 3a. This left the questions raised there as here still unanswered and would subject petitioner Thompson to deprivation of his liberties and properties in

contravention of the 14th Amendment to the U.S. Constitution.

Petitioner then filed a timely Motion for discretionary review in the Kentucky Supreme Court. Respondent Commonwealth of Kentucky did not file a reply brief in the Kentucky Supreme Court.

Members of that court have consistently held that,

"In absence of a brief by appellee, appellate court would elect to accept appellant's statement of fact as correct." R.Cr. 1.260, Raney v. Hall, 506 S.W. 2d 510.

"Reviewing court would reverse Judgment when appellants brief reasonably appeared to sustain such action and appellees filed no brief." Hawkins v. Wallace, 384 S.W. 2d 507.

Where appellant filed brief with appropriate notice, failure of appellees to file brief would be regarded pursuant to rule as confession of *error,* requiring reversal of judgment without consideration of the merits of case. Com Department of Highway v. Johnson, 377 S.W. 2d 596. Also see: Powell v. Pruitt, 376 S.W. 2d 689, Marcum v. Fitzgerald, 376 S.W. 2d 518.

Mr. John Elfers, Kenton County Attorney, signed the warrant of arrest to arrest petitioner Thompson for attorney Richard Slukich who was hired by attorney Richard Nelson to bring criminal trespassing against petitioner Thompson in order to gain possession of the Thompson home (subject matter of #79-719).

Judge Palmore's action is in violation of Kentucky Civil Rule 76.28 as the order is not per curian, Appendix, page 2a, and it does not contain the names of any other justice of that court.

Kentucky Supreme Court Rule 1.020 provides for the conduct of business (final decisions and matters of policy) and require a majority of that court to conduct its business.

The trial court record (Kenton District Court) has been tampered with . . ., but even with the tampering of the record, there is no evidence (complaint, warrant and/or other criminal process) that defendant-petitioner assaulted a police officer (charge dropped over petitioner's objections), was disorderly, resisted arrest, and/or was DUI.

A conviction based on a record lacking any relevant evidence as to a crucial element of the offense charged violates due process. Vachon v. New Hampshire, (1974) 38 LEd 2d 666.

"It makes no difference that a defendant has sought a new trial as one of his remedies, or even as his sole remedy, he does not waive his rights . . ." Bryan v. United States, 94 LEd 335.

That decision was buttressed in Burks v. United States, 57 LEd 2d 1 when the court stated, "A person does not waive his right to a judgment of acquittal by moving for a new trial."

The court in U.S. v. Jones, 580 F 2d 219 interpreted Burks (Supra) to mean that dismissal of the case is required whenever the insufficiency of the evidence is raised in a timely motion for a new trial or a Judggment of acquittal after verdict.

CONCLUSION

For the foregoing reasons, probable jurisdiction should be noted.

Respectfully submitted,

EDDIE THOMPSON, JR.

APPENDIX

LETTERHEAD OF THE
SUPREME COURT OF KENTUCKY

Office of The Clerk

I, Martha Layne Collins, Clerk of the Supreme Court of Kentucky, do hereby certify that the foregoing Order Denying Discretionary Review, is a true and correct copy of the original order as same appears on file in my office, Eddie Thompson, Jr. vs. Commonwealth of Kentucky, File #79-SC-361-D.

Done this 12th day of November, 1979, at Frankfort, Kentucky.

MARTHA LAYNE COLLINS
CLERK

By /s/ LILLIE COX
Lillie Cox
Deputy Clerk

SUPREME COURT OF KENTUCKY

79-SC-361-D (79-CA-613-I)

EDDIE THOMPSON, JR. MOVANT

v.

COMMONWEALTH OF KENTUCKY
RESPONDENT

KENTON CIRCUIT COURT
78-X-45

ORDER DENYING DISCRETIONARY REVIEW

The motion of Eddie Thompson, Jr., for a review of the decision of the Court of Appeals is denied, and the decision stands affirmed.

ENTERED October 23, 1979.

/s/ JAMES S. PALMORE
Chief Justice

COMMONWEALTH OF KENTUCKY
COURT OF APPEALS

No. 79-CA-613-D

EDDIE THOMPSON, JR., PRO SE
MOVANT

v.

COMMONWEALTH OF KENTUCKY
RESPONDENT

On Motion For Discretionary Review
From Kenton Circuit Court
Action No. 78-X-45

ORDER DENYING DISCRETIONARY REVIEW

BEFORE: HAYES, HOGGE, AND WILHOIT, JUDGES.

The Court, having considered the motion for discretionary review and being otherwise sufficiently advised, ORDERS that it be and is hereby DENIED.

ENTERED: June 25, 1979.

/s/ ANTHONY M. WILHOIT
Judge, Court of Appeals

COMMONWEALTH OF KENTUCKY
COURT OF APPEALS

No. 79-CA-613-I

EDDIE THOMPSON, JR., PRO SE
MOVANT

v.

COMMONWEALTH OF KENTUCKY
RESPONDENT

On Motion From Kenton Circuit Court
No. 78-X-45

ORDER

(1) GRANTING MOTION FOR LEAVE TO FILE MOTION FOR DISCRETIONARY REVIEW OUT OF TIME

(2) GRANTING MOTION FOR LEAVE TO FILE TYPEWRITTEN COPIES OF MOTION FOR DISCRETIONARY REVIEW

BEFORE: MARTIN, Chief Judge, GUDGEL and HOWERTON, Judges.

The Court, having considered the motions filed herein, and being otherwise sufficiently advised, hereby ORDERS that said motions be GRANTED. The motion for discretionary review is ORDERED filed effective this date.

Respondent shall have 20 days from the date of this order in which to file a response.

ENTERED: May 25, 1979.

/s/ J. W. HOWERTON
Judge, Court of Appeals

COMMONWEALTH OF KENTUCKY
COURT OF JUSTICE
CIRCUIT COURT, KENTON COUNTY

Case No. 78-X-45

CERTIFICATION

I, ED. F. SCHROEDER Clerk of the CIRCUIT Court, do certify that the following are true and correct copy(s) of the Pretrial Order, Order setting for Trial; Verdict; Judgment of Trial Court; Order granting hearing on Motion for new trial; Order denying motion for new trial; Judgment of Sept. 21, 1978; Order striking counsel; Order of Disqualification; Order dismissing Appeal; Order overruling motion for Reconsideration; and Order overruling motion to modify Judgment as recorded in the Office of the Circuit Clerk of KENTON County.

In TESTIMONY WHEREOF witness may hand as Clerk aforesaid, this the 20th day of April, 1979.

ED. F. SCHROEDER
Clerk

By: /s/ THELMA YOUNG D. C.

KENTON DISTRICT COURT
Third Division

Case Number 78-M-1186

COMMONWEALTH OF KENTUCKY,
PLAINTIFF,

vs.

EDDIE J. THOMPSON,
DEFENDANT.

ORDER SETTING FOR PRETRIAL

(Filed August 15, 1978)

It appearing to the Court that the within cause stands ready for trial with Jury and the Court otherwise being advised in the premises, now therefore:

IT IS ORDERED as follows:

1. A Pretrial conference will be conducted in the within proceedings on Monday, the 21st day of August, 1978, at 10:00 a.m.

2. All parties will be required to submit any Pretrial memorandum or brief to the Court on the day of Pretrial conference at the time of Pretrial for the Court's review.

Any Pretrial memorandum submitted to the Court shall contain the following material:

a. A succinct statement of the charges against the Defendant and whether the same are based upon warrant, summons, civil complaint or citation.

b. A statement of the principles of law involved in the case supported by a citation of appropriate authorities.

c. Request for Jury instructions subject to the right to counsel to supplement such requests during or upon conclusion of the trial and evidence.

3. Any Pretrial memorandum shall be served upon opposing counsel at the time of Pretrial.

4. Written objections and/or affidavit of counsel showing why this matter should not be tried on August 21, 1978. Trials are expected to commence at 10:00 a.m. in Courtroom 3B of the City/County Building.

In accordance with Rule 11(3) of the Supreme Court relative to Juror Management and selection, surplus Jurors of the Kenton Circuit Court, Division 3, will be employed in the trial of this matter.

Any objections thereto must be submitted in writing to the Court upon day of Pretrial.

5. At the conclusion of the Pretrial conference, either of the available and indicated dates will be set for trial in the within proceedings.

At Covington, Kenton County, Kentucky, this the 15th day of August, 1978.

/s/ JOSEPH T. CONDIT for
WILLIAM L. SCHMAEDECKE
Kenton District Judge

cc: Honorable Raymond Lape
Mr. Eddie Thompson, Pro Se

KENTON DISTRICT COURT
Third Division

Case Number 78-M-1186

COMMONWEALTH OF KENTUCKY,
PLAINTIFF,

vs.

EDDIE THOMPSON,
DEFENDANT.

ORDER SETTING FOR TRIAL

(Filed August 23, 1978)

This cause came on for Pre-Trial Hearing on August 21, 1978. The issues having been discussed and resolved, it was determined that this matter is set for hearing.

IT IS ORDERED the within matter be tried before the jury of the Kenton District Court on Friday, August 25, 1978, at 11:00 a.m.

Further, IT IS ORDERED that STANDBY COUNSEL, in the person of the Honorable Dennis Williams, be and he is hereby appointed to aid and assist the Defendant in the defense of this cause and to be with him at all necessary stages until further order or until discharged.

/s/ W. L. SCHMAEDECKE
WILLIAM L. SCHMAEDECKE
Kenton District Judge

cc: Honorable Raymond Lape
Honorable Dennis Williams
Mr. Eddie Thompson, pro se
8-23-78 jh

KENTON DISTRICT COURT
Third Division

No. 78-M-1186

COMMONWEALTH OF KENTUCKY
PLAINTIFF

vs.

EDDIE J. THOMPSON, JR.
DEFENDANT

ORDER

A motion having been made to this Court by the Defendant for a pre-trial inspection of certain documents and due notice of this motion having been given to the Kenton County Attorney, now on motion of the Defendant,

IT IS ORDERED that the documents, papers and objects designated in the Subpoena Duces Tecum issued upon application of the Defendant and dated August 24, 1978 (a copy of which is attached hereto) be produced to the Defendant for inspection and copying forthwith upon service of this Order.

/s/ W. L. SCHMAEDECKE
Judge, Kenton District Court

Dated: 8/24/78

[NOT IN RECORD OF DISTRICT OR CIRCUIT COURT]

COMMONWEALTH OF KENTUCKY
KENTON DISTRICT COURT
Third Division

Case Number 78-M-1186

COMMONWEALTH OF KENTUCKY,
PLAINTIFF,

vs.

EDDIE J. THOMPSON,
DEFENDANT.

VERDICT

We the jury find the Defendant, Eddie J. Thompson, (strike out one or the other.)

Not guilty, [Stricken out].

Guilty under Instruction 1, Count 2, and fix his punishment at a fine of $100.00.

And we find the Defendant, Eddie J. Thompson, (strike out one or the other.)

Not guilty, [Stricken out].

Guilty under Instruction 1, Count 2, and fix his punishment at a fine of $200.00, and confinement in/or the county jail for No (days) (months).

/s/ EDWARD SWEENEY
FOREMAN

COMMONWEALTH OF KENTUCKY
COURT OF JUSTICE

CALENDAR

Date Sept. 1, 1978. Time 12 o'clock.

Case No. 78-M-1186

Style: Thompson, Eddie J., 736 Highland Ave.,
Covington, Ky.

Charges or Claim: D.U.I. — Guilty; Resisting Arrest — Guilty; Disorderly Conduct — Dismissed.

Proceedings: Fine of $300.00.

Judge Signature
/s/ W. L. SCHMAEDECKE
Date 9-1-78

COMMONWEALTH OF KENTUCKY
KENTON DISTRICT COURT
Third Division

Case Number 78-M-1186

COMMONWEALTH OF KENTUCKY,
PLAINTIFF,

vs.

EDDIE J. THOMPSON, JR.,
DEFENDANT.

ORDER

(Filed September 12, 1978)

The Defendant's motion for a new trial is set for oral argument and supplemental hearing on Thursday, September 21, 1978, at 1:15 p.m., in courtroom 4A. Argument will be limited to ten (10) minutes for the Defendant, five (5) minutes for the Commonwealth.

/s/ W. L. SCHMAEDECKE
Kenton District Judge

cc: Mr. Eddie Thompson, pro se
Honorable Raymond Lape
Ms. Jean Smith (Special Docket)
9-12-78 jh

KENTON DISTRICT COURT
Third Division

Case Number 78-M-1186

COMMONWEALTH OF KENTUCKY,
PLAINTIFF,

vs.

EDDIE J. THOMPSON, JR.,
DEFENDANT.

ORDER DENYING MOTION FOR NEW TRIAL

(Filed September 21, 1978)

The Court, having reviewed the Defendant's motion and cited grounds for a new trial and the authorities presented to the Court, oral argument also having been made available to the Defendant, and further having reviewed the motion and grounds as having been filed properly by the Defendant, pro se, counsel of record having been discharged by the Defendant, and in review of the motion of the Defendant, the Court rules and finds as follows:

1. The evidence supports the verdict of the jury. The testimony was that the Defendant and several others had been drinking whisky at the home of Rudell Thompson. The amount of intoxicants consumed by the Defendant was in dispute. However, after he left the home of his brother, the Defendant was observed by Officer Epperson of the Covington Police Department near the intersection

of 15 & Madison proceeding in a southerly direction on Madison Avenue in the north bound lane. The conduct of the Defendant caused the arresting Officer to veer off the roadway to a lot after which he reversed his way of travel and proceeded to pursue the Defendant's truck. The pursuit lasted about three blocks when the Officer came upon the Defendant who had stopped his truck in a bus stop zone across the street from a pizza parlor. At that point, the Officer stopped his vehicle behind the pick-up truck of the Defendant and requested the Defendant to perform certain field sobriety tests which the Defendant did not perform to the satisfaction of the Police Officer. From these tests, the Police Officer determined in his mind probable cause that the Defendant was under the influence of intoxicants and he, having observed the Defendant operate this vehicle within his presence, offered the Defendant two options; to call a cab, which would take him to his home, or be placed under arrest for violation of the statute.

The Defendant rebuffed the former option and Officer Epperson then placed the Defendant under arrest for a violation of KRS 189.520(2).

It is the findings of the Court that the evidence of a card-playing and drinking party coupled with the operation by the Defendant of his truck on the wrong lane of travel and the observation of the Police Officer obtain during the field sobriety tests constituted sufficient evidence to submit the question to the jury.

The case *Marcum* v. *Commonwealth,* 483 SW 2, holds that instructions to the jury may not contain the statutory pursuant to KRS 189.520(4), which presumptions were not included to the jury and therefore does not apply.

2. The instructions of the Court to the jury were proper in that at the conclusion of the case the Court preemptorily entered a verdict of acquittal on the charge of disorderly conduct in that there was no evidence to support the charge and the Court did not allow the jury to speculate on the charge of disorderly conduct. The memo of the Defendant is in error in that only three charges were lodged against this Defendant, not four, and two instructions were given to the jury following the preemptory verdict of acquittal by the Court on the charge of disorderly conduct. The charge of disorderly conduct having been dismissed by the Court instructions to that charge were not necessary, and in fact would have been improper for the Court to so instruct on the law of disorderly conduct.

3. The Court rejects alleged error number three in that instruction number three given to the jury recited verbatim rule 9.56, effective July 1, 1978, which replaced the rule quoted by the Defendant in his motion for a new trial. This rule was promulgated by the Supreme Court as a result of the decision of *Taylor* v. *Commonwealth,* 56 LEd 2d 468 U.S., —— (1978).

4. It is the opinion of the Court that trial counsel in the person of Henry Curtis, Esq., Attorney at Law, Louisville, Kentucky, presented all admissible evidence in the trial of this case. The exhibits appended to the Defendant's motion do not bring to light any material variance in the evidence as presented during the trial such as would be sufficient evidence for a new trial nor has any cause been shown to the Court nor is the Court of its own initiative aware of any cause, which prevented this Defendant from receiving a fair trial. It is the opinion of the Court that the interest of justice was indeed served

even though the Defendant may personally object to the finding and verdict of the jury.

/s/ W. L. SCHMAEDECKE
W. L. SCHMAEDECKE
Kenton District Judge
Third Division

cc: Honorable Raymond Lape
Mr. Eddie J. Thompson, Jr., pro se.

9-14-78 jh

COMMONWEALTH OF KENTUCKY
COURT OF JUSTICE

CALENDAR

Date September 21, 1978. Time 1:15 p.m.

Case No. 78-M-1186

Style: Commonwealth of Kentucky vs. Thompson, Eddie J.

Charges or Claim: Motion for new Trial

Proceedings: O/R

Judge Signature
/s/ WLS

Date 9/21/78

KENTON DISTRICT COURT
Third Division

Case Number 78-M-1186

COMMONWEALTH OF KENTUCKY,
PLAINTIFF,

vs.

EDDIE J. THOMPSON, JR.,
DEFENDANT.

ORDER

(Filed September 22, 1978)

On motion of the Defendant to strike the name of Henry Curtis as Counsel of Record for the Defendant and for leave to proceed pro se,

IT IS ORDERED the name of Henry Curtis be stricken as Counsel of Record for the Defendant and the Defendant, Eddie J. Thompson, Jr., be allowed to proceed PRO SE.

/s/ W. L. SCHMAEDECKE
Kenton District Judge

cc: Honorable Henry Curtis, Esq.
Honorable Raymond Lape
Mr. Eddie Thompson, Jr.
9-22-78 jh

KENTON DISTRICT COURT
Third Division

Case Number 78-M-1186

COMMONWEALTH OF KENTUCKY,
PLAINTIFF,

vs.

EDDIE THOMPSON, JR.,
DEFENDANT.

ORDER

(Filed September 27, 1978)

On motion of the Defendant for a stay of payment of fine imposed by the Court on verdict of a jury, and pursuant to R. Cr. 12.76,

IT IS ORDERED pursuant to R. Cr. 12.76 that the payment of fine be stayed pending the appeal upon payment of the filing fee on appeal.

/s/ W. L. SCHMAEDECKE
Kenton District Judge

cc: Honorable Raymond Lape
Mr. Eddie Thompson
9-27-78 jh

[NOT IN RECORD OF DISTRICT OR CIRCUIT COURT]

KENTON CIRCUIT COURT
THIRD DIVISION

No. 78 X 45

EDDIE THOMPSON, JR.
APPELLANT

vs.

COMMONWEALTH OF KENTUCKY
APPELLEE

ORDER OF DISQUALIFICATION OF PRESIDING JUDGE AND REASSIGNMENT OF CASE

(Filed October 16, 1978)

This cause coming on to be heard on the motion of Appellant for the Presiding Judge to disqualify himself, and the Court noting that there is presently pending in the U. S. District Court, Eastern District of Kentucky, a suit, wherein this Appellant is the Plaintiff, and the Presiding Judge of this Court is the defendant, for a writ of prohibition to prohibit the defendant therein from acting further in certain lawsuits in this Court and assigned to this Judge.

IT IS THEREFORE ORDERED by the Court that this cause be reassigned by the Clerk of this Court to another Division of this Court for hearing.

/s/ D. J. GOODENOUGH
JUDGE

ENTERED: October 16, 1978

KENTON CIRCUIT COURT
FOURTH DIVISION

No. 78 X 45

EDDIE THOMPSON, JR.
APPELLANT

vs.

COMMONWEALTH OF KENTUCKY
APPELLEE

ORDER

(Filed February 22, 1979)

This Court having reviewed the appeal of the Appellant and finding no legal or factual basis for overturning the decision of the District Court jury, now therefore,

IT IS HEREBY ORDERED AND ADJUDGED that the appeal is DISMISSED, and the sentence of the District Court shall be executed.

/s/ JAMES J. GILLIECE, JUDGE

Copies:
Mr. E. Thompson, Jr.
Hon. R. Lape, Jr.

KENTON CIRCUIT COURT
FOURTH DIVISION

No. 78 X 45

EDDIE THOMPSON, JR.
APPELLANT

vs.

COMMONWEALTH OF KENTUCKY
APPELLEE

ORDER

(Filed March 8, 1979)

IT IS HEREBY ORDERED that the Appellant's Motion for Reconsideration is OVERRULED.

/s/ JAMES J. GILLIECE, JUDGE

Copies:
Hon. E. Thompson, Jr.
Hon. R. Lape, Jr.

KENTON CIRCUIT COURT
FOURTH DIVISION

No. 78 X 45

EDDIE THOMPSON, JR.
APPELLANT

vs.

COMMONWEALTH OF KENTUCKY
APPELLEE

ORDER

(Filed March 15, 1979)

IT IS HEREBY ORDERED AND ADJUDGED that the motion of the Appellant to modify the Judgment is OVERRULED.

/s/ JAMES J. GILLIECE, JUDGE

Copies:
Hon. R. Lape, Jr.
Mr. E. Thompson, Jr.

Supreme Court, U. S.
FILED
JAN 23 1980
MICHAEL RODAK, JR., CLERK

SUPREME COURT OF THE UNITED STATES

October Term, 1979

No. 79-867

EDDIE THOMPSON, JR. - - - - Petitioner

versus

COMMONWEALTH OF KENTUCKY - Respondent

On Petition for Writ of Certiorari to the Supreme Court of Kentucky

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BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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SUPREME COURT OF THE UNITED STATES

October Term, 1979

No. 79-867

EDDIE THOMPSON, JR. - - - - *Petitioner*

v.

COMMONWEALTH OF KENTUCKY - - *Respondent*

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF KENTUCKY

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

COUNTERSTATEMENT OF THE QUESTION PRESENTED

Whether the Kentucky Rules of Civil Procedure were properly followed by the various state tribunals.

ORDER AND OPINION BELOW

The Order below from the Supreme Court of Kentucky is styled Eddie Thompson, Jr. v. Commonwealth, which denied the petitioner's motion for a discretionary review of an order of the Kentucky Court of Appeals. Petitioner has correctly set out in his petition the various opinions and orders pertaining to this case.

It should be noted that the substantive opinion involved is the opinion of the Kenton Circuit Court which affirmed the judgment of the Kenton District Court and dismissed the petitioner's appeal.[1] Petitioner's Appendix, 20a. A succinct and accurate statement of the case is correctly set out in the Order of the Kenton District Court denying Petitioner's motion for new trial. Petitioner's Appendix, 13a.

JURISDICTION

Petitioner's application for a Writ of Certiorari should be denied for the reason that said petition does not comply with the requirements of 28 U.S.C. § 1257(3).

Petitioner's allegations are directed toward a declaration that various rules of Kentucky Civil Procedure were either ignored or violated by the various state tribunals. The petitioner *inter alia* contends that the Kenton Circuit Court abused its discretion in ordering that the sentence of the Kenton District Court be executed; that the circuit court clerk conspired to prevent him from filing his appeal and that the Supreme Court of Kentucky acted improperly when "a single judge" denied his appeal.

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[1]Since the petitioner is appearing in a *pro se* capacity, certain procedural errors have occurred in the presentation of this petition. Under the Kentucky Rules of Civil Procedure, the appellant may appeal a judgment of the district court, a court of limited jurisdiction, to the circuit court. In the event the circuit court affirms the judgment, the appellant may present to the Court of Appeals a motion for discretionary review. KCP 72.01, KCP 76.20. Technically this writ should be directed to the Kenton Circuit Court.

Aside from being utterly frivolous, the petitioner has failed to present a significant federal or constitutional question that would allow this Court to invoke its jurisdiction over this matter.

This Court has consistently held that the existence of an independent state ground would preclude review of a related federal question. *Henry* v. *State of Mississippi,* 379 U. S. 443 (1965). In this case, it is obvious that the Opinion of the Supreme Court of Kentucky was entirely based on considerations of state procedural rules and applicable Kentucky decisions. Unless there exists an extraordinary constitutional situation, state interpretations of state statutes are binding on this Court. *Bell* v. *State of Maryland,* 378 U. S. 226 (1964).

The petitioner's application for a writ of certiorari is obviously defective on its face and presents a series of questions that involve questions of state law and procedure. Ordinarily the respondent would briefly respond to the merits of the petitioner's allegations to demonstrate that none of the federal safeguards had been violated by the state. In this instance, however, the petitioner's reasons are so plainly without merit that any further response is unnecessary. See Petitioner's Appendix, 13a-16a.

This petition should be dismissed for the reason that petitioner has failed to comply with the requirements of 28 U.S.C. §1257(3).

CONCLUSION

Since the petitioner has failed to demonstrate that there is a significant federal question to be resolved by this Court and since all of the petitioner's contentions either involve questions of state appellate procedure or unfounded claims of wrongdoing, the petitioner's application for a writ of certiorari should be denied.

Respectfully submitted,

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Counsel for Respondent

PROOF OF SERVICE

I, George M. Geoghegan, Jr., one of counsel for respondent herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 21st day of Jauuary, 1980, I served the petitioner with Brief for Respondent in Opposition to Petition for a Writ of Certiorari by placing three (3) copies of the same in the United States mail, first-class postage prepaid, and addressed to Eddie Thompson, Jr., 736 Highland Avenue, Covington, Kentucky 41011, Petitioner Pro Se, and served the Kenton County Attorney by placing one (1) copy of same in the United States mail, first-class postage prepaid, and addressed to Honorable John Elfers, Kenton County Attorney, 304 City-County Building, Covington, Kentucky 41011.

GEORGE M. GEOGHEGAN, JR.
Assistant Attorney General